

**BEFORE
THE PUBLIC SERVICE COMMISSION OF
SOUTH CAROLINA
DOCKET NO. 2014-346-WS**

IN RE:)
)
Application of Daufuskie Island Utility)
Company, Inc. for Approval of an)
Adjustment for Water and Sewer Rates,)
Terms and Conditions.)
)
)
_____)

**MOTION TO RECONSIDER
DIRECTIVE 2017-59-H
AND DIRECTIVE 2017-60-H
WITH AFFIDAVIT OF
JOHN F. GUASTELLA**

SUMMARY

In addition to the scope of proceedings on remand, the two issues discussed by the parties and the Standing Hearing Officer prior to issuance of Directives 2017-59-H and 2017-60-H were DIUC's request for expedited hearing and whether the Office of Regulatory Staff ("ORS") and the Intervenors ("Intervenors" or "POAs") should be permitted additional discovery prior to rehearing.¹

The purpose of this Motion with attached and incorporated Affidavit of John F. Guastella is two-fold. First, the Motion and Affidavit make clear the necessity of modifying Order 2017-59's schedule so that this case is resolved prior to December 31, 2017. Second, the Motion explains that DIUC intends to serve its prefiled testimony on Wednesday, October 18th, and asks that the parties review the testimony and allow the Standing Hearing Officer to determine based upon that testimony whether there is any actual need for additional discovery prior to rehearing.

¹ Standing Hearing Officer Butler issued Directive 2017-59-H on October 10, 2017, then supplemented the same with a clarification in Directive 2017-60-H on October 11, 2017. For purposes of this Motion both Directives are referred to collectively as "Directive 2017-59-H" or "Order 2017-59-H".

DISCUSSION

Following the South Carolina Supreme Court's Order reversing and remanding this case to the Commission for rehearing, on October 4, 2017, the Applicant ("DIUC") requested an expedited hearing schedule be entered so that the matter could be concluded prior to December 31, 2017. See Applicant's Proposal for Procedure Following Remand and Expedited Hearing. The grounds for the request were:

1. The Supreme Court's decision addressed Order 2015-846's adjustments to five revenue items: Property Taxes, Plant In Service, Bad Debts, Management Fees, and Rate Case Expenses.
2. The Supreme Court's decision specifically addressed three of these five adjustments. The Court ruled that Order 2015-846's adjustments to DIUC's revenue request as to Property Taxes, Plant In Service, and Bad Debts were in error. Accordingly, the scope of the rehearing is narrow. Expedited scheduling is proper and efficient for the issues to be decided by the Commission.
3. Time is of the essence for a remand hearing and order because DIUC is collecting its requested rates pursuant to bonds. The terms of the current bonds were jointly agreed upon by DIUC and the POAs then approved by the Commission. However, the bonds expire on December 31, 2017. The Proposal explained it would be likely impossible, for DIUC to obtain additional bonds for any time period after December 31, 2017.
4. Even if bonds could be obtained for time periods beyond December 31, 2017, DIUC has already spent over \$58,000 for bonds and further bond costs to the ratepayers would be avoided by concluding this matter before December 31, 2017.
5. The issues for rehearing are narrow and the delay of discovery is not warranted.

After hearing from the parties via conference call as to DIUC's Proposal, Standing Hearing Officer Butler issued Order No. 2017-59-H which denied DIUC's request for an expedited hearing. Order 2017-59-H states:

DIUC's counsel stated a preference for the pre-filing of testimony, hearing, and issuance of an Order in this case before the end of 2017, based on the questionable ability of the Company to obtain a continuing appeal bond during the pendency of the remand, and also the expense of said bond. However, the Company's counsel

had not obtained any specific information on availability or expense. Accordingly, this Standing Hearing Officer has no specific information to rely on in justifying the promulgation of an expedited schedule.

Order at 2 (emphasis added).

The Attached Affidavit of John F. Guastella Provides Specific Evidence of the Necessity for Expedited Hearing.

In seeking reconsideration of Order 2017-59-H and to provide specific information upon which the Hearing Office can rely to issue an expedited hearing schedule, DIUC hereby submits the Affidavit of John F. Guastella. Mr. Guastella is the President of Guastella Associates, LLC, which is the manager of DIUC. As evidenced by the Affidavit, the surety company is not willing to provide another bond. See Guastella Affidavit. In an attempt to obtain bonds, Mr. Guastella contacted Danny Sellers of Insurance Office of America to request a pre-determination of availability of bonds for any post-December 31, 2017, time period. Mr. Sellers arranged for all the previous bonds for DIUC in this matter; however, he responded flatly that there would be no additional bonds issued in this case. See Attachment A to Guastella Affidavit (“Our last effort on this was the maximum allowed from the Surety. Sorry we could not be of help.”)

In addition to the bonding company’s refusal to participate in any additional bond(s) post-December 31, 2017, the prerequisites to obtaining the most recent bonds included substantial financial information, actions, and financial commitments from individuals and entities beyond the control of DIUC. As explained by the Affidavit of Mr. Guastella, those additional funds are no longer available for DIUC’s use after December 31, 2017. Also, SunTrust has indicated it will not extend any further credit to DIUC until after this rate case concludes. See Attachment B to Guastella Affidavit. So, DIUC cannot provide the security that was originally required for the issuance of the bonds. That does not begin to address the additional bonds that would be necessary to cover rates collected after December 31, 2017. In sum, as the sworn testimony of Mr. Gusatella’s Affidavit states, “DIUC is not

able to renew its existing bonds or obtain additional bonds for rates charged after December 31, 2017. This fact is demonstrated DIUC's recent efforts and my experience in attempting to secure previous bonds."

**The Scope of DIUC's Prefiled Testimony Will
Demonstrate No Discovery Is Necessary.**

In Order 2017-59-H, Standing Hearing Officer Butler found that "the 'de novo' terminology [in the Supreme Court decision] clearly means that the Court intended that the Commission hold a new hearing on all issues in the case." The Order did not agree with the reading of the Supreme Court decision set forth in DIUC's Proposal for Procedure Following Remand and Expedited Hearing. DIUC asserted the "five adjustments addressed by the Supreme Court define the parameters of what is to be addressed by the Commission on remand." Proposal at 2. DIUC's Proposal asserted no further discovery was warranted or permitted. Id. at 3-4. Order No. 2017-59-H went on to address discovery stating, "since the Commission will hold a new hearing on all such issues, the Commission's discovery rules are clearly applicable."

In response to Order 2017-59-H, ORS has indicated that the prefiled testimony of DIUC will determine whether it needs to pursue any discovery. See Order 2017-60-H referring to email of Andrew Bateman dated October 10, 2017 ("ORS does not intend to argue issues on which the Supreme Court gave guidance. Further, regarding the utilization of discovery, any discovery required by ORS will depend upon the filings to be made by DIUC.")

To assist ORS and the Hearing Officer in understanding whether any discovery is necessary, DIUC intends to serve its prefiled testimony on Wednesday, October 18th. The Hearing Officer has scheduled a telephone conference among the parties for October 20th, at which time the issue of any actual need for discovery in response to the Applicant's filings can be considered.

DIUC continues to assert the position expressed in its Proposal for Procedure Following Remand and Expedited Hearing regarding why ORS and the POAs are not entitled to additional discovery prior to rehearing. See Proposal at 3 (“While it is true the Supreme Court ruled the parties are not limited solely to the evidence previously presented, the Court did not open the door to lengthy and expensive discovery.”). As explained in DIUC’s Proposal and during the Hearing Officer’s call with counsel, DIUC has already responded to in excess of 150 individual discovery requests and the issues to be addressed on rehearing do not warrant opening the door to discovery. DIUC is hopeful that its rush to submit its prefiled testimony will dispel any concern that discovery is warranted.

CONCLUSION

The inability to obtain additional bonds after December 31, 2017, necessitates an expedited hearing schedule, as evidenced by the Affidavit of John F. Guastella submitted in response to Order 2017-59-H. By serving its prefiled testimony early, DIUC will further demonstrate expedited scheduling is appropriate because the scope of DIUC’s presentation for rehearing is narrow and discovery is not warranted.

WHEREFORE, DIUC requests the Standing Hearing Officer reconsider Order 2017-59-H’s allowance of further discovery in this matter and enter an expedited schedule as follows:

October 20, 2017	Applicant Prefiled Testimony Due;
November 3, 2017	Rebuttal Testimony Due;
November 10, 2017	Surrebuttal Testimony Due;
November 20, 2017	Hearing.

FURTHERMORE, IN THE ALTERNATIVE, should the Standing Hearing Officer permit additional discovery, DIUC requests the same be established within the expedited schedule herein requested.

Respectfully submitted,

/s/ Thomas P. Gressette, Jr.

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October 16, 2017
Charleston, South Carolina

CERTIFICATE OF SERVICE

This is to certify that on October 16, 2017, I caused to be served upon the counsel of record named below a copy of the foregoing DIUC Motion to Reconsider Directive 2017-59-H and Directive 2017-60-H With Affidavit of John F. Guastella, by electronic mail, as indicated.

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